1950

File No. Prohibition II 1950 (N) Pt. I

Legal Dept.

B BRANCH

Subject:—

Notifications under the Bombay Prohibition Act, 1949.

(for subsequent ppns. please see Pt. II)

Re 33

File No. Prohibition II / 1950 (N) Pt. I

Gen. 194 c.

145-F.

Legal Department.
R.I.No. 21063 dated 21-12-1949.

Submitted with referrnce to R.D. note at pp.5-7 ante.

2. Under G.N.R.D. No. 10484/45(S), dated 16-6-49, all Assistant and Deputy Collectors hav e been invested with powers under various sections of the Bombay Prohibition Act, 1949 (Bom.XXV of 1949) including powers to cancel or suspend licences and permits under sention S-54(1) and power to grant licences for the improt, export, sale or possession or the tranaport of molasses under section 61(2) and 61(3) . The Prohibition and Excise Commissioner has stated in his letter at p. 1 ante that the powers under sections 54(1), 61(2) and (3) pertain to the cancellation of licences and granting of molasses licences and permits and as such are important powers and it is not desirable to confer these powers on them and has therefore proposed to withdraw the same. He, however, states that certain poers to be delegated to them were omitted in the notification. He therefore suggests that certain powers under sections 120, 121(1), ~~233~~, 122, 123 and 125 to 128 should be delegated to them. A draft notification for the above purposes is forwarded to this department for scrutiny.

3. Under section 6(1) of the Bombay Prohibition Act, 1949 the Provincial Govt. is authorized to invest any officer of the Police Department or any officer of any other department with such powers as may be deemed necessary. But so far as the gtant of licences for the import, export, sale or possession of molasses is concerned, it is the Collector who alone can be authorized for the same under section 61(2).

4. A revised draft notification in place of R.D. draft at p. 9 is sent herewith.

Legal Department.

It appears that Ethyl Acetate, Amyl Acetate and Acetone are chemicals and are very useful as solvents in industries and paints. The Industrial Chemist, therefore suggested to Government to obtain the opinion whether their manufacture can be controlled under any law in force in the Province of Bombay. The matter was referred to the R.L.A. and on the advice of the R.L.A. Government declared the aforsaid three substances to be intoxicating drugs under section 3(9)(iv) of the Bombay Abkari Act, under R.D. notification No. 8363/39, dated the 20th June 1946. It may be pointed, however, that the R.L.A. in his last of the three opinions on the subject left it to Government to decide after calling for further expert opinion whether the abstances in question are intoxicating or narcotic substances within the meaning of sub-clause (iv) of clause (9) of section 3 of the Bombay Abkari Act. Government, thereafter, issued notification referred to above. From R.D. file No. 8363-III-(a)/39, it appears that the nature of the above three substances is as stated below:-

(1) Ethyl Acetate - The Chemical Analyser has not been able to obtain the detailed information regarding it (page 5 of R.D. File). The Superintendent, Central Distillary at p. 33 R.D. File states that it is not an intoxicant. On p. 27 of the file it is stated that it is use as medicine.

(2) Amyl Acetate- The Chemical Analyser to Government at p. 6 of R.D. file states that it is definitely poisonous. It not an intoxicant (p.33). It causes irritation of the eye and nose. (p41).

(3) Acetone - The Superintendent, Government Central Distillary at p. 43 of R.D. file states that it cannot be classed as intoxicants.

2. The Chemical Analyser in his letter No. 4187, dated 17-10-45 at p. 45 of R.D. file states that the last two substances mentioned above cause narcosis.

3. In view of the facts stated above, the only point for consideration is whether the said substances can be declared to be intoxicating drugs in view of entry 8 in List II and entry 19 in List III in the Seventh Schedule to the Constitution of India. Under entry 8 in List II the State Legislature has got power to make law in respect of intoxicating liquors. Under entry 19 in List III, both the State Legislature and the Parliament have got power to ~~make~~ make law in respect of drugs and poisons ~~synthe~~ subject to the provisions of entry 59 of List I. It is stated in para. 3 of the Commissioner of Excise letter No. 23A-18-UN, dated 15th June 1944 that the above three chemicals are very useful solvents in industries and paints, their manufacture should be encouraged but controlled.

4. R.D. may, therefore, obtain the expert opinion whether the above three substances which do not fall under the entry intoxicating liquors are such kinds of drugs which require to be controlled in view of the scope and objects of the Bombay Prohibition Act.

Additional Secretary to Government.

U.R. to R.D. No. 2567 , Dated the 22nd February , 1950.

Legal Department.

Under rule 2 of the proposed Rules the scale of fees in respect of a pass for the transport of foreign liquor has been prescribed. Section 144 (1)(d) of the Prohibition Act, 1949, empowers the Commissioner to prescribe the scale of fees in respect of a pass. In view of this specific provision it would not be in order to prescribe the fees under rules under section 143. The R.D. draft has therefor been divided into two parts . The preamble of the notification under section 143 has been altered so as to comply with the provisions of sub-section (3) of section 143.

Additional Secretary to Government.

U.R. to R.D. No. 3704 , Dated the 16th March 1950.

SSM / 23/6/561

Legal Department.

A revised draft notification is sent herewith.

2. The R.D. draft prohibits removal of medicated or tonic wines to transporter's premises only. This provision can be easily circumvented. The intention is that no wine should be removed form the place specified in the rule to any place in the State unless there is a pass. The rule has been amended accordingly. It is also provided that the removal should be subject to the provisions of the pass.

Additional Secretary to Government.

U.R. to R.D. No. 3744 , Dated the 17th March 1950.

Legal Department.

Draft Notification No. 1. - A revised draft Notification is sent herewith.

Draft Notification No. 2.- A revised draft Notification is sent herewith. Since the intention is to prohibit the grant of licence to any person the appropriate provision of the Act under which the notification may be issued is clause (a) of section 139 and not clause (g).

Draft Notification No. 3.- A revised draft Notification is appended. The R.D. proposal to substitute a new condition (a) for the existing condition (a) together with the proviso in sub-section (2) of section 44 is not in order. According to the proposed R.D. condition a Club Licence can be granted on the condition that the average number of members residing in the Club premises who hold Foreign Liquor Consumption Permits granted under section 40 of the Act is not less than 30. It is not clear how a Club which will have to make an application for the grant of a licence before the 6th April 1950 can show that the average number of members who hold foreign liquor consumption permits is not less than 30 since no permit would be required by any foreigner before the 6th April 1950. Moreover, the new condition which R.D. proposes to substitute will run entirely counter to the existing condition and may be attacked on the ground that it nullifies the object of clause (a) of subsection (2) of section 44 read with the Explanation. It is true that under section 53 of the Bombay Prohibition Act read with section 139(g) power was taken to add to, alter or substitute the conditions in a licence. But the enactment of the Act, in, view of the Federal Court's judgment in the Bihar case a controversy has started whether, such provisions are in the nature of conditional or delegated legislation.

The question is at present before the Bombay High Court in the City Civil Court case. Care will have, therefore, to be taken to see that the conditions to be added or altered do not run counter to the provisions of the section which expressly lay down certain conditions. It will therefore be desirable to omit condition (2) with respect to the hotel licence and variations of condition inregard to Club licence. Section 35(2)(ii), section 43 and section 44(2)(b) are adequate enough to carry out the object in view.

Draft Notification No. 4, - A revised draft notification is appended.

Additional Secretary to Government.

U.R. to R.D. No. 4248 , Dated the 27th March 1950.

Legal Department.

In place of the Revenue Department drafts three revised draft Notifications are sent herewith.

Notification No. 5.- The power under section 107 is to be exercised by the Commissioner subject to any rules or orders made by the Provincial Government. Even if nor rules are made the Commissioner can exercise the said power. Since it is not intended to fetter the discretion of the Commissioner in any way there is no need to make a rule. Since the section gives power to the Commissioner to issue a notification a notification as form the Commissiher as in the form sent herewith may issue. It is presumed that the whole of fees leviable on foreign liquor is to be remitted. If so, there is no point in using the word " partially" in the notification.

Notification 6.- The object in view can be achieved by amending G.N. P.D. Notification No. 10484/45(a), dated the 16th June 1949.

Notification No. 7. - A revised draft is sent herewith. To be consistant with the Bombay Foreign Liquors Rules 1950, the reference to the letter of introduction to be obtained by a foreign tourist has been deleted. Condition (C) cannot appropriately be inserted as a condition subject to which foreign liquor may be transported, possessed, consumed or used. It has therefore been omitted form the revised draft. The preamble has been recast to achieve the object in view.

Additional Secretary to Government .

U.R. to R.D. No. 4391 , Dated 30th March 1950.

NOTIFICATION.

Bombay Prohibition Act, 1949.

No. .- In exercise of the powers conferred by section 107 of the Bombay Prohibition Act, 1949 (Bom. XXV of 1949), the Commissioner hereby remits wholly the fees leviable on any potable foreign liquor removed ~~from~~ from a Custom House or a Land Custom ~~in-~~ the Station in the state of Bombay or across the boundary of the State of Bombay to any place within the said State if such removal is

(1) by or on account of a person holding a special permit granted under section 41, 9/4 or

(II) by a foreign ~~tourist~~ tourist holding an interim permit granted under section 47.

The Prohibition Commissioner.

Legal Department.

A revised draft notification in place of R.D. draft at p. 3 ante is sent herewith. So far as Bhang and Ganja are concerned the R.D. Notification No. 7992/28, sated the 29th January 1932, already stands cancelled. If the R.D's intention is to canc el it inrespect of Charas then only it should be superseded.

2. R.D. Notification at p. 5 ante .- The obje objects of the proposed notification is, firstly, to exempt form the provisions of section 12(c) of the Act th transport of any consignment of liquor dispatched form one place to antother in the Madhya Pradesh State throughthe intervening territory of the East Khandesh District if the transport is made under a Pass granted by a duly empowered officer of the Madhya Predesh Government and if the conditions whichare identical with those specified in the Though Transport Rules are fulfilled; and, secondly to exempt the consignment so transported form duties leviable under sections 105 and 106. As regards the first part of the propo sed notification, attention is invited to the Bombay Through Transport Rules, 1949 and the Through Transport (States) Rules, 1949. According to the aforesaid Transport Rules the transport of any consignment of intoxicant etc., from a place outside the State of Bombay to another p ace outside it through the intervening territory of the State of Bombay is lawful if the consignment is covered by a pass issued by the Collector or Chief Excise Authority at the place from which the liquor is consigned and if certain conditions specifie d therein are FULFILLED fulfilled. It would therefore, appear, that the scope of the Bombay Through Transport

(States) Rules, 1949 is wide enough to apply to consignments of liquor dispatched form one place to another in the Madhya Pradesh State through the intervening territory of the East Khandesh District and it would not therefore be necessary to make any new order exempting such consignment from the provisions of section 12(c). As regards the second part of the proposed notification, the Government Orders, Revenue Department Nos. 10484/45(h) and 10484/45(v), dated the 16th June 1949, provide for the exemption of all excisable articles transported in accordance with the provisions of the ~~Bombay~~ Bombay Through Transport Rules, 1949 or the Through Transport (States) Rules, 1949 form the Provisions of sections 105 and 106. It is not, therefore, necessary to make a new order on the subject. As the intention covered by the proposed notification is already carried out by the existing orders as stated above, it is not necessary to issue a fresh order as proposed.

3. R.D. draft at p. 7 ante.- The Revenue Department has notified the following substances as intoxicating drugs namely :- (1) Athyl Acetate; (2) Amyl Acetate; and (3) Acetone. The question whether these three substances can be controlled under the Bombay Prohibition Act has been considered in U.R. to R.D. No. 2567, dated the 22nd February 1950 . It is presumed that the Excise Commissioner considers them to be intoxicating drugs.

Additional Secretary to Government.

U.R. to R.D., No. 5168, Dated the 15th April 1950.

Legal Department.

A revised draft Order embodying a revised draft of the licence form is sent herewith.

2. The Revenue Department draft provides that the licence shall be gtanted to paesons who guarantee to sell the articles only to bona fide users and not to persons likely to use them for the manufacture of intoxicants. The provisions is not in order inasmuch as it would not be proper to cast any duty on the applicant which it would apparently be beyond his control to fulfil. Moreover under the revised draft the Collector has been empowered to satisfy himself that there is no objection to grant the licence applied for. He therefore can refuse to gtant the licence in cases in which he has reasons to believe that the licence will be abused.

Additional Secretary to Government.

U.K, to R. D. No. 6992 Dated 2nd May 1950.

Revenue Department,

Bombay Castle, May, 1950.

Bombay Prohibition Act, 1949.

No. -. In Government Notification, Revenue Department, No. 10484/45, dated the 28th February 1950, published at page 425 in Part IV-B of the Bombay Government Gazette dated 9th March 1950., for the word and figure "2" Columns wherever it occurs, the word and figure "1" Column shall be substituted.

By order of the Governor of Bombay,

Secretary to Government.

Legal Department.

Revised drafts of the notification and order are sent herewith. As the prices fixed under the notification cannot take effect form a date anterior to th date of the Notification, Revenue Department should fix a date for bringing the prices into force which shall be subsequent to the date on which the Notification is issued.

2. The Explanation to the Revenue Department draft Notification at p. 87 provides that the ex-pit price does not include any charges subsequent to the delivery of molasses. This would imply that the charges for the delivery of molasses would be included in the ex-pit prices, but that can hardly be the intention. The Explanation has, therefore, been amended so as to refer to charges incidental to the delivery of molasses. It is presumed that the prices fixed under the Notification are reasonable.

3. Under section 63 of the Act the prices fixed by Government shall be in accordance with the grades of different qualities of molasses. Under that section the decision of Government regarding the gradation is final. It is presumed that before prices are fixed as proposed Government will take a decision as contemplated by the section regarding the gradation of molasses.

Additional Secretary to Government.

U.R. to R. D. No. 5169 , Dated 15th April 1950.

The draft letter on page 9 which the R.D. proposes to send to the Consul General for Iran is not in order. Section 40 of the Bombay Prohibition Act, 1949, provides for granting of permits for the use or consumption of foreign liquor to persons on certain conditions. One of these conditions is --

(i) that such person was either born and brought up or domiciled in any country outside India where such liquor is being generally used or consumed; or

(ii) that such person is on the Register of Foreigners under the Registration of Foreigners Act, 1939, and is not domiciled in the Dominion of India.

Under this condition if a person is on the Register of Foreigners and is not domiciled in India, it would be open to grant him a permit for the use or consumption of ~~xx~~foreign liquor. In the case of such person it is not necessary to ascertain whether in the country in which he is either born and brought up or domiciled, liqupr is being generally used or consumed. If, therefore, any of the Iranians asking for a permit is on the Register of Foreigners an inquiry whether in the country in which he is either born and brought up or domiciled, liquor is being generally used or consumed will not be relevant or pertinent. If a person is not on the Register of Foreigners then it will be necessary to ascertain whether the country in which he is either born and brought up or domiciled is a country where foreign liquor is being generally used or consumed. That will be a question of fact to be determined in each case. No general conclusion can be drawn from the fact that the country in which such person is either born and brought up or domiciled is in Asia or in Europe.

Sd/J.R.DHURANDHAR.
26/5

Additional Secretary to Government.

Legal Department.

It is proposed by the Commissioner of excise in the draft notification No. 2 at p. 35 to amend rules, regulations, orders. notifications and forms etc. made, or issued under --

(1) The Bombay Opium Smoking Act, 1936; and

(2) The Bombay Prohibition Act, 1949.

As the Bombay Opium Smoking Act, 1936 has not been specified in the Schedule to the Bombay Commissioners (Abolition of office) Bill, 1950, the first mentioned law shall be construed as if the references therein to the 'Commissioner' were references to the State Government. But it is proposed to issue an order under section 3 of the Bill so as to substitute the Director of Excise and Prohibition as the authority instead of the State Government. On the issue of the order, the references to the Commissioner in the said enactment and the rules, regulations, notifications and forms issued thereunder would be construed as reference to the Commissioner of Excise and Prohibition. (Vide definition "existing law" in section 2(3)). But the same is not the case with the Bombay Prohibition Act, 1949. The Act has been specifically amended with reference to certain sections thereof and if the intention is to substitute the words "the Director of Excise and Prohibition" for the words "the Commissioner" in the notifications, orders, rules, forms etc. it would be necessary to amend specifically the relevant rules, regulations, notifications, orders and forms made or issued thereunder. The definition of "esixting law" would not be available for the Bombay Prohibition Act, 1949.

The draft notifications at pages 33 and 41 ante, as slightly amended, are in order.

Three revised draft notifications in place of R.D. drafts at pages 35, 37 and 39 are sent herewith

herewith accordingly.

Additional Secretary To Government.

U.R. to R.D. , No. 373- Confl., Dated the 31st May 1950.

Legal Department.

Rule 65 of the Foreign Liquor Rules empowers a foreigner to apply for a premit for the possession, use and consumption of liquor to the Collector. Before granting a permit, the Collector has to satisfy himself that the applicant is a foreigner. The term "foreigner" as defined in rule 3(5) of the said rules means a person falling under clause (c) of sub-section (1) of section 40(X) of the said Act refers to a person who

(X) of the Bombay Prohibition Act, 1949, who is not a citizen of India. Clause (c) of Sub-section (1) of Section 40

(1) was either born or brought up or domiciled in any country outside India where such liquor is being generally used or consumed; or

(ii) is on the register of foreigners under the Registration of Foreigners Act, 1939, and is not domiciled in the Dominion of India:

Provided that in the ca e of any person falling under sub-clause (i) or (ii) -

(a) such person has been residing and intends to reside in India temporarily and that such person has a fixed and settled purpose of making his sole and permanent home in the country outside India; and

(b) such person has been ordinarily using or consuming such liquor.

By G.O. R.D. No. 10484/45(c), dated the 10th March 1950 at p. 105 ante the persons falling under the aforesaid clause (c) and who are not citizens of India have been exempted from the proviso (a) read with Explanation to the said clause (c) with the result that persons falling under the said clause (c) irrespective of stay in this country would be eligible to such a permit for possession, use and consumption of foreign liquor provided that they are not citizens of India. Article 5 of the Constitution of India provides that at the commencement of the said Constitution, every person who has his domicile in the tetnitory of India and

(a) who was born in the territory of India, or

(b) either of whose parents was born in the territory of India, or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India. Articles 6 and 8 declare the persons referred to in those articles notwithstanding the provisions of article 5, as citizens of India. The essential ingredient for a person to be a citizen of India is that he must have his domicile in India. It is immaterial whether a person belongs to a Asiatic or a non-Asiatic country. If a person whether he be a Asiatic or non-Asiatic country is not a citizen of India, he would be a foreigner within the meaning or rule 3(5). (Cf. L.D. No. 7161, dated the 26th May 1950).

2. The eligibility of the applicants referred to in the letter of the Commissioner of Exicise at page 111 ante for the grant of a permit would therefore depend upon two things whether

(1) a person falls under clause (c) of section 40(1) of the Act; and

(2) such person is not a citizen of India.

3. Foreigners of non-Asiatic countries marrying Indians and Indians marrying foreigners of non-Asiatic countries and acquiring citizenship of non-Asiatic countries.- The persons falling in the latter category who by marrying foreigners acquire citizenship of non-Asiatic countries would not be citizens of India in virtue of the provisions of article 9 of the Constitution of India. Such persons will have, however, to prove that they are persons falling under clause (c) of section 40(1) of the Bombay Prohibition Act, 1949. If they do, then only such persons would be eligible for a permit under rule 65 of the Bombay Foreign Liquor Rules, 1950.

Foreigners marrying Indians would cover two kinds of cases-

(1) An India, husband marrying woman who is a foreigner.

(2) A foreigner marrying an Indian woman. The broad proposition is that the domicile of a married woman is during coverture the same as, and changes with, the domicile of the husband. (Vide sub-rule (2) of rule 9 on page 107 of Dicey's Conflict of Laws). Though a wife may acquire a house for herself, she cannot have any other domicile than that of her husband (See Rule 10 on p. 109 of the same book).

The foreign wife of an Indian therefore would possess the domicle of her husband. It would therefore be necessary to determine in the first instance the domicile of the husband. If it is proved that the husband possesses the Indian domicile, it would follow that the wife too possesses that domicile. In that event, neither the husband nor the wife would be a foreigner within the meaning of rule 3(5) of the said rules and therefore would not be eligible for a permit.

If on the other hand, there is evidence to show that the husband does not possess an Indian domicile, neither the husband nor the wife would be entitled as a citizen of India as defined in article 5 of the Constitution. Both the husband and the wife would in that event be eligible for a permit if they are persons, falling under clause (c) of section 40(1) of the Prohibition Act.

In the case of a foreigner having an Indian wife the wife would follow the domicile of her husband and would cease to possess the Indian domicile and would not be a citizen of India. Both the husband and the wife would be eligible for a permit if they are persons falling under clause (c) of section 40(1).

4. Indians acquiring nationality of non-Asiatic foreign countries.- As pointed out above, it is

immaterial whether a person is an Asiatic or non-Asiatic. All that is necessary to ascertain for purposes of rule 65 is whether a person is a citizen of India and whether he is a person falling under clause 40(1)(c). If, therefore, a person has acquired the nationality, that is, the citizenship of any country in the would other than India he ceases to be a citizen of India in virtue of the provisions of article 9 of the Constitution of India. In that event all that would be necessary to ascertain in the case of such a person is whether he is a person falling under clause 40(1)(c). If he is, he would be eligible for a permit.

5. Clause (c) of the Commissioner's letter refers to foreigners born and brought up in India but having citizenship of non-Asiatic countries or registered under the Reigstration of Foreigners Act, 1939.

If a person is a citizen of a country other than India or is on the register of foreigners under the Registration of Foreigners Act, 1939, he cannot be a citizen of India and the mere fact that he is born and brought up in India will not change his citizenship. Such a person would be eligible for a permit if he falls under clause (c) of section 40(1) of the Prohibition Act.

Additional Secretary to Government,
Legal Department.

M.R. No. R.D., No. 7638 , Dated the 6th June 1950.

SSM / 25/6/56.

Legal Department.

The Prohibition and Excise Commissioner in his endorsement No. 25-8/50, dated the 13th May 1950 at p. 25 ante states that the import of charas was prohibited even in 1944. The Commissioner has not stated whether G.N. R.D. No. 7992/28, dated 29th January 1932 in so far as it was kept alive in relation to charas had been specifically cancelled. The said notification cannot be said to have been superseded by section 20 of the Prohibition Act, 1949 as that section is controlled by section 11 which empowers Government to permit import or manufacture of charas subject to the orders made in that behalf and any existing notification would continue to be in force under section 148. The R.D. is therefore requested to state whether the said notification has been specifically cancelled by Government in 1944-seven even before the G.N.R.D. No. 6747/39, dated 20th January 1944 was issued.

2. With reference to para. 2 of R.L.A.'s opinion No. 5168, dated 15th April 1950 the Prohibition Commissioner states that the G.N. R.D. No. 493, dated 12 21st February 1921 would remain valid under section 148 of the Act. This view is not correct. The Bombay through transport rule, 1949 issued under G.N.R.D. No. 10484/45(J), dated 16th June 1949 impliedly supersede all the previous rules relating to through transport of intoxicants (including the rules in the notification of 1921 relating to the Central Provinces) as the definition of "through transport" would show. It is not necessary to supersede them again.

Additional Secretary to Government.

U.R. to R.D., No. 8554, Dated the 22nd June 1950.

Legal Department.

The view taken by R.U. is not correct. The power exercisable by the State Government under sub-section (1) of section 64 of the Act can be delegated to the Prohibition Commissioner under section 10 thereof.

Additional Secretary to Government.

U.O. to R.U. No. 10454 , Dated 24th July 1950

SSM / 25/6/561

Legal Department.

The Revenue Department's proposal is to permit oil companies to mix power alcohol with petrol and to distribute it.

2. The Revenue Department's proposal therefore would not affect any provision of the Motor Spirit Rationing Order, 1941. As regards the use of petrol, the oil companies making use of petrol for the prupose of mixture will have to abide by the provisions of the x petrol. The proposed order would not be in derogation of the provisions of the Petroleum Act, 1934.

x petroleum Act, 1934, regarding the storage of-

3. It is obvious that until the rule under the Indian Power Alcohol Act 1948 are made and that Act has been bought into force under sub-section (3) of section 1 of that Act it will not be legally feasible to issue any licences under the said Act. The proposal made in R.D. note is to ~~fleew~~ follow in genral the lines of the U.P. Power Alcchol Rules as regards mixture etc. and to grant the licences not as statutory licences but as temporary provisional permissions. It does not appear wh t purpose such a proposal is intended to serve as the conditions of any such licence would not be legally enforceable nor their breach can be punished.

Additional Secretary to Government.

U.R. to R.D. No. 10197 , Dated the 19th July, 1950.

[illegible] /25/6/56.

Legal Department.

When sub-section (2A) of section 27 of the City of Bombay Police Act, 1902 was amended by the Bombay Prohibition Act, 1949, section 66 of the Bombay Prohibition Act, was not included in that sub-section. The omission of section 66 was deliberate as the offence created by that section was not considered so serious as to merit exiternment. The Porhibition Department had agreed to that course. It is for R.D. ~~for R.D.~~ and H.D. to consider whether any change in law is now necessary.

Additional Secretary to Government.

U.R. to R.D., No. 10275, Dated the 20th July 1950.

Legal Department.

In virtue of the Rules made under section 143 of the Bombay Prohibition Act, 1949, the Collector has the power to issue permits to foreigners. Under sub-rule (3) of Rule 65 of those Rules if the Collector on making the necessary enquiries is satisfied that there is no objection, he may, in consultation with the Superintendent of Excise of his district and in conformity with the orders of the State Government and the Commissioner, grant the applicant (foreigner) a permit for the possesion, use and consumption of foreign liquor. The words in the Rule "if the Collector on making necessary enquiries is satisfied that there is no objection" imply that in particular cases the Collector has the power to refuse to grant permits. Moreover, a pwer power to grant a permit necessarily implies a right to refuse. (see Fakir Mohmed vs. Municipal Commissioner of Bombay, 39 Bom. L.R. 536 and Haji Ismail Haji Isad Vs. Municipal Commissioner of Bombay, I.L. R. 28 Bombay. 253). But the power of the Collector in refusing to grant a permit in any particular case cannot be exercised by him arbitrarily or fancifully, particularly when the exercise of such power would not be consistent with the express provisions of section 40(c)(ii) of the Bombay Prohibition Act, 1949. If therefore a national of Iran satisfies the provisions of section 40(c)(ii) read with the ppoviso, it would not be right to hold that the licensing authority is entitled to refuse to grant him a permit only on the ground that he is an Asiatic foreigner. If, however, there are other grounds on which the licensing authority can reasonably hold that a permit should not be granted, the authority will be entitled to refuse to grant the permit. It is true that the grant of permits under the Bombay Prohibition Act is by way of an exception, but if the provisions of the Act expressly provide that a particular class of persons is elegible for

for such grant, it would not be legal to engraft an amendment on such provisions by means of an executive order. The proper thing would be to consider each case of an Asiati foreigner on its merits and if a permit is to be refused in such case, to base such refusal on the grounds which are not inconsistent with the express provisions of section 40(c)(ii) of the Bombay Prohibition Act, 1949.

Additional Secretary to Government.

U.R. to R.D. No. 8719 , Dated the 26th June 1950.

SSM / 25/6/56.

The request made on behalf of Mrs. Mehta is that she should be given a Foreigner's permit under the Bombay Prohibition Act, 1949. In order to be entitled to a foreigner's permit under the Bombay Foreign Liquor Rules, 1950, made under section 143 of the Bombay Prohibition Act, a foreigner as defined in those rules is a person who falls under clause (c) of sub-section (1) of section 40 of the Bombay Prohibition Act and who is not a citizen of India. Section 40(1)(c) refers to the classes of persons:-

(1) a person born and brought up or domicile in any country outside India where liquor is being generally use or consumed.

(2) A person who is registered as a foreigner under the Registration of Foreigners Act, 1939.

In both the cases it is necessary according to the rule quoted a ove that person should not be a citizen of India. In para. (3) of the opinion in U.R. No. 7638 dated 6th June 1950, it was held that the foreign wife of an Indian would possess the domicil of her husband and if the husband has an Indian domicil, would be a citizen of India udder Article 5 of the Constitution. According to the principles of International Law also, a wife acquires the nationality of her husband by marriage (see Oppenheim's International Law, Vol. I, p. 597). It will have to be held that Mrs. Mehta is a citizen of India and is not a foreigner within the meaning of the Bombay Foreign Liquor Rules. She is not, therefore, entitled to a foreigner permit under the said rules, unless she can prove that she has given up Indian citizenship. The remark in the note of the Prohibition Commissioner that foreign wives of Indians retain their own nationality is not

is not understood. Of course it is open to an Indian citizen to give up his Indian citizenship and acquire another nationality under Article 9. But until proof in support thereof is forthcoming, it cannot be held that a foreign wife of an Indian citizen is not a citizen of India. Mr. Mehta's letter does not contian ~~anything~~ anything to suggest that Mrs. Mehta has given up Indian citizenship. It, however, appears that Mrs. Mehta is given health permit. Perhaps the proper thing would be to give her more facilities on the basis of that permit. Section 52 of the Bombay Prohibition Act contains a provision enabling permits to be given in special cases. But this is a wide provision and the validity of such provision and application in favour of an Indian citizen is being attacked in the prohibition case which is shortly coming up for hearing. It will be desirable not to take action under that section until the case is decided.

Legal Department.

The notifications in question may be issued as proposed by the Secretary, Revenue Department.

2. It appears that the orders are taken by the Revenue Department to issue the notifications on the 16th August. The Bombay Commissioners (Abolition of Office) Act, 1950, has been notified to come into force on the 15th August 1950. The Revenue Department presumably does not propose to issue them on the 15th August as it is a public holiday. But if the notifications are issued on the 16th August there will be a vacuum for one day. To overcome this difficulty the nitifications may be issued before the 15th August with the modification in the preamble of each notification to show that the amendment will take effect on and form 15th August 1950. Please see the notification at p. 105 as amended in pencil. The other notifications may be amended similarly before issue.

Additional Secretary to Government.

U.R. to R.D. No. 11392, Dated the 10th August 1950.

SSM / 25/6/56.

NOTIFICATION.

Revenue Department,
Bombay Castle, September 1950.

Bombay Prohibition Act, 1949.

No. 3143/49-II. In exercise of the powers conferred by sub-section (1) of section 10 of the Bombay Prohibition Act, 1949 (Bom. XXV of 1949), the Government of Bombay is pleased to delegate to the Director of Excise and Prohibition the powers exercisable by it under sub-section (1) of section 64 of the said Act.

By order of the Governor of Bombay,

Secretary to Government.

SSM / 25/6/56.

Legal Department.

The Government Notification, Revenue Department, No. 10484/45(x) , dated the 16th June 1949 in so far as it relates to the areas formerly forming part of Kolhapur and now forming part of the Kolhapur District, will continue to be in force till it is repealed under the proviso to sub-section (1) of section 4 of the Bombay Merges States (Laws) Act, 1950.

2. Since the validity of the Bombay Prohibition Act has been challenged in the High Court, no notification thereunder in respect of or in connection with any "intoxicant" the scope of which also is under consideration of the High Court may be issued till the judgment is declared.

3. Only the amending notifications as at pages 105-115 ante which substitute the expression "Prohibition Commissioner" by the words "Director of Excise and Prohibition" may be issued as the former office is being abolished. The G.N., R.D. No. 10484/45(x), dated the 16th June 1949 relating to Kolhapur and other ~~said~~ Indian States has been included for the present in the draft at page 107 in order that the Director of Excise and Prohibition may exercise the power form 15th August 1950 in these areas. The R.D's draft at pages 119-125 and the question in para. 4 of R.D's note will be examined in the light of the High Court Judgment when the interpretation of "intoxicant" will be known. If all these notifications are reissued in the existing form so as to cover the whole State the question whether any substance specified therein falls within the meaning "intoxicant" as interpreted by the High

by the High Court will have to be examined.

4. Draft notification No.V requires prvious publication as it is issued under rule-making section 143 which requires previous publication. A revised draft notification for the purpose is sent herewith in place of the draft at page 113 ante.

Additional Secretary to Government.

U.R. to R.D. No. 11112 , Dated the 5th August , 1950

SSM /25/6/56.

Legal Department.

Six revised draft notifications in place of R.D. drafts at pp.87-99 ante are appended herewith.

2. The notifications at pp. 98-99 ante which are proposed to be amended by the Revenue Department have been issued by the Prohibition and Exicise Commissioner in virtue of the powers given to him by the Prohibition Act. The amendment suggested is to substitute the word "Director" for the words "Prohibition and Excise Commissioner" or "Commissioner" appearing in the preamble. The Prohibition and Excise Commissioner" will stand abolished on the day on which the Bombay Commissioners (Abolition of Office) Bill comes into force as an Act, his powers will be exercised as from that date by the "Director". The preamble therefore does not require any amendment as proposed by the Revenue Department.

3. The Revenue Department should consider whether G.N., R.D.No. 10484/45(X), dated the 16th June 1949, needs to be amended on the lines of draft notification II sent herewith.

Additional Secretary to Government.

U.R. to R.D. No. 548 Confl. Dated the 21st July 1950.

SSM / 25/6/56.

SA 6/8

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